

S.B. CIVIL WRIT PETITION NO.6904/2007.

Om Prakash Harsh Vs. R.P.S.C., Ajmer & Ors.

Date of Order :: 24th October 2007.**HON'BLE MR. JUSTICE DINESH MAHESHWARI**

Mr. Nitin Trivedi, for the petitioner.

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BY THE COURT:

The petitioner having offered his candidature in response to an advertisement issued by the respondent-Rajasthan Public Service Commission (RPSC) for recruitment to the post of Teacher Gr.III as a Physically Handicapped person, said to be suffering from the handicap of low vision, was allotted Roll No. 206482 for the purpose of appearing in the said examination. According to the petitioner, he was declared successful in the written examination but thereafter the RPSC by its letter dated 26.09.2007 (Annex.3) proceeded to cancel his candidature on the ground that he was not carrying at least 40% permanent disability in the visually handicap category.

The petitioner has averred that the Medical Board constituted by the respondent No.3, the Superintendent, Associated Group of Hospitals, P.B.M. Hospital, Bikaner had issued the certificate (Annex.1) describing his disability as that of "Blind Lt. Eye"; and aggregate percentage of permanent

disability has been shown as "Visually Impaired 30%; Cosmetic Disfiguration 10%". The contention of the petitioner is that the finding of the Medical Board is virtually to the effect that he is suffering from disability of blindness in left eye and aggregate of disability is 40% though it has been bifurcated into the two components as stated in the certificate, of 30% towards visual impairment and 10% towards cosmetic disfiguration; and, according to the petitioner, the respondent RPSC has acted wholly illegally in not considering such aggregate of 40% disablement.

It has further been stated that the petitioner, after receiving the letter dated 26.09.2007 of cancelling his candidature, approached the respondent No.3 questioning on the percentage of disablement who stated that the certificate of disablement had been issued and in case of any directions of the Commission (RPSC) or of any Court, the petitioner could be examined again. The petitioner has sought for the reliefs in this writ petition that the impugned letter dated 26.09.2007 issued by the Commission cancelling his candidature may be quashed and the RPSC may be directed to consider his candidature.

Learned counsel has made the submissions on behalf of the petitioner in conformity with the averments taken in the writ petition and submitted that the petitioner being suffering

from disablement of blindness in left eye cannot be a matter of dispute and it was only that the Medical Board proceeded to bifurcate such disability into two components but their aggregate comes to 40%; and, according to the learned counsel, the component towards cosmetic disfiguration is nevertheless required to be counted towards the disability of blindness. Upon this Court expressing reservations on competence of this writ petition for the submissions sought to be made, which essentially relate to the specific dispute of facts, learned counsel submitted that the petitioner has made alternative prayer of appropriate directions to the respondent No.3; and urged that the said respondent No.3 may be directed to issue relevant certificate in accordance with law.

Having examined the material placed on record and having given a thoughtful consideration to the submissions made on behalf of the petitioner, this Court is clearly of opinion that this matter does not require consideration in extraordinary writ jurisdiction of this Court.

It cannot be said that the respondent RPSC has committed any error or illegality in issuing the letter dated 26.09.2007 (Annex.3) whereby the candidature of the petitioner as a physically handicapped person has been cancelled on the ground that he was not suffering from 40% disablement in the relevant category. To bring his case within

the purview of such 40% disability, the petitioner has put forward the contention that the cosmetic disfiguration of 10% as stated in the certificate (Annex.1) nevertheless remains that of a disability and the petitioner cannot be said to be suffering from less than 40% handicap. The submission does not appear convincing.

A comprehension of the certificate (Annex.1) makes out that the Medical Board has stated about the history of illness and trauma being of "9 months"; and has stated description of disability as "Blind Lt. Eye". The Medical Board has been specific enough to clarify that percentage of disability towards visual impairment was 30%. Cosmetic disfiguration is an entirely different aspect and the same standing at 10% has, thus, been stated distinctly. The petitioner does not seem justified in suggesting that such disfiguration be also considered towards visual impairment; nor there appears any basis to countenance such proposition.

So far the relief claimed by the petitioner of directions to the respondent No.3 for issuance of fresh certificate is concerned, in the first place, there is no material on record to show that the petitioner ever approached the said respondent No.3 for the purpose of issuance of fresh certificate. The submission as made in paragraph 7 of the writ petition are suggestive only of the petitioner approaching the respondent

No.3 and asking the question as to how his was not a case of 40% disability ? Apart from the fact that the oral assertion in that regard carries no value or meaning, even the assertion is suggestive only of his posing questions on the findings of the Medical Board. There appears no reason to proceed on the averment as made by the petitioner that the respondent No.3 proposed of examining him again on being asked by the Commission or by the Court. There appears no reason why in this particular case the Commission would at all be required to ask the Medical Board to issue a fresh certificate? Then, there is no basis whereupon a writ would be issued by this Court to the respondent No.3. The letter dated 26.09.2007 (Annex.3) cannot be said to be suffering from any illegality or any ambiguity. If the petitioner wants to question the contents of the said medical certificate (Annex.1) or to have them interpreted in a different manner, the matter obviously gives rise to serious disputed questions of fact and cannot be entertained in writ jurisdiction.

Viewed from any angle, the petitioner is not entitled for any relief in extraordinary writ jurisdiction.

The petition fails and is, therefore, rejected.

(DINESH MAHESHWARI), J.

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